

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3087 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JIGNESH ISHWARLAL PATEL

Versus

POLICE COMMISSIONER OR HIS SUCCESSOR IN THE OFFICE

Appearance:

1. Special Civil Application No. 3087 of 2003
MS KD PARMAR for Petitioner No. 1
MISS NANDINI JOSHI Ld. AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/05/2003

ORAL JUDGEMENT

In this petition under Article 226 of the
Constitution of India, the petitioner has challenged the

legality and validity of the detention order passed by the Police Commissioner, Surat City dated 14.8.2002 in exercise of powers vested under him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") branding the petitioner-detenu as dangerous person within the meaning of sec. 2(c) of the PASA Act.

The petitioner has challenged the legality and validity of the detention order on number of grounds. However, ld. counsel for the petitioner has concentrated her arguments mainly on one point and submitted that the authority has passed the order of detention without proper application of mind. Even for the sake of argument, if it is accepted that the petitioner is involved in four different theft cases, even then this alleged wrong can be said to be prejudicial to the maintenance of law and order and not public order.

I have carefully gone through the grounds of detention served to the detenu. The detaining authority has mainly considered the registration of four different criminal offences punishable under sec. 379 of IPC. Of course, the authority has considered the statements of two secret witnesses for recording the subjective satisfaction and passing of detention order under challenge. But it is apparent that on 8.6.2002 the petitioner was arrested for the first time for stealing a motor-cycle parked at a public place. It is submitted by Miss Datta that the petitioner has been falsely implicated in other three offences. Even if it is accepted that he is involved in these offences than also his so-called activities cannot be said to be prejudicial to the maintenance of public order or a threat to a public peace or tranquility.

In support of her submission, she has placed reliance on two decisions. The first decision is reported in 2000(1) GLH P. 393 and the second decision of this court, according to Miss Datta helps the present petitioner. This decision is given while dealing with the Special Criminal Application No. 1681 of 1993. The table of the cases attached with the grounds for detention served to the petitioner also shows that the petitioner is found responsible for four offences registered at Umra Police Station area. The activity is also limited and, therefore, the harsh order of detention ought not to have been passed in light of the above referred settled legal proposition. For short, the order of detention is found unsustainable. If it is found that the subjective satisfaction recorded by the detaining

authority is erroneous and the activities of the detenu is not otherwise prejudicial to public order, than the order of detention cannot sustain and, therefore, it requires to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 14.8.2002 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The detenu is hereby ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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